IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Gajanand Deroliya & Aother Vs. Thakurji Shri 1008 Shri Mahaveerji & Others
(SB Civil Writ Petition No.720/1997)

SB Civil Writ Petition under Article
226 of the Constitution of India.

Date of order: November 28, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Sanjay Mehrishi, for the petitioners.

Mr. N.K.Maloo, for the respondents.

BY THE COURT:

The petitioners seek to quash the order dated January 4, 1997 of the Board of Revenue Ajmer (for short `Board') whereby the appeal under section 76 of Land Revenue Act,1956 (for short `Act') against the decision of Revenue Appellate Authority Sawai Madhopur (for short `RAA') dated August 9, 1995 through which he had maintained the order of Collector Sawai Madhopur dated April 22, 1989, was allowed and the orders of RAA and Collector were set aside.

2. Contextual facts depict that the petitioners intended to construct a hotel in a part of land khasra No.1236/1 situated in village Naurangabad Tehsil Hindaun District Sawai Madhopur and submitted an application on March 12, 1988 under Rule 6 of the Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agricultural Land for construction of Cinemas, Hotels and establishment of Petrol pumps) Rules,1978 (for short

`Rules') before the Collector Sawai Madhopur for allotting him land in the name of M/s.Deroliya Enterprises, Shri Mahavirji. On receiving said application the Collector Sawai Madhopur sent the same on March 13, 1988 to Tehsildar Hindaun for report, who submitted his report on March 14, 1988 i.e. on the next day. Thereafter the Collector sought further clarification from the Tehsildar and the Tehsildar Hindaun answered all the queries of Collector vide letters dated April 18, 1988, November 1, 1988 and March 9, 1989. It was stated by Tehsildar Hindaun that the land comprised in khasra No.1236/1 measuring 2 bighas 16 biswas situated in village Naurangabad stood in the Khatedari of Mandir Mahavirji (respondent No.1). But in addition to above land, there was an extra 1 bigha land lying vacant at site. The Tehsildar also submitted site plan of the disputed land drawn by Inspector Land Records along with the trace of the disputed land and copy of the revenue record.

3. On receiving the report of Tehsildar Hindaun, the Collector examined the matter and came to the conclusion that one bigha excess government land was available at the site besides the khatedari lands of respondent No.1 khasra No.1236/1 measuring 2 bighas 16 biswas. Khasra No.1236/2 measuring 16 biswas and khasra No.1236/3 measuring 5 biswas in all 3 bighas 17 biswas and accepting the said one bigha of land as sivai chak land, the Collector Sawai Madhopur vide order dated April 22, 1989 allotted one bigha of land in khasra No.1236/1 of village Naurangabad Tehsil Hindaun in favour of the Deroliya Enterprises Sri Mahaveerji on the terms and conditions stated in the allotment order.

4. Against the allotment order of Collector, the respondent No.1

filed appeal in the court of RAA, who vide judgment dated June 5, 1989 dismissed the appeal as not maintainable. The second appeal of the respondent No.1 was allowed by the Board of Revenue (for short `Board') and the case was remanded to RAA for disposal of appeal on merits. The RAA again dismissed the appeal on August 9, 1995. However the second appeal preferred by respondent No.1 was allowed by the Board on January 4, 1997. Against this order of the Board that the petitioners have filed instant writ petition.

5. I have given my anxious consideration to the rival submissions and scanned the material on record.

6. Coming to the relevant statutory provisions, I notice that Rule 5 of Rules provides for classes of land which may be allotted by way of lease. Rule 5 reads as under:-

> "5. Classes of land which may be allotted.- Land for the construction of cinema or a hotel or establishment of a petrol pump may be allotted by way of lease out of the following categories of unoccupied Government land namely:-
> (a) Unculturable land classified as `Gair mumkin' or `Ujar':
> Provided that the land used as cremation ground or burial ground, grazing grounds or pasture land and the `pal' or embarkment of a tank the water of which is used by the village cattle, even though classified as enculturable shall not be allotted;
> (b) Where suitable land classified as unculturable is not available, culturable waste land or land classified as banjar;
> (c) Where land of the categories mentioned in the preceding clauses are not available, the lowest class or barani land available:
> Provided that no irrigated land classed as chahi, nahari, or talabi shall be allotted in any case, except with the permission of the State Government."

7. Under Rule 6 if any person having a legal right to an agricultural land, intends to construct a Cinema-house or a hotel or to

establish a petrol pump thereon he may submit application to the Collector of the District. Rule 6 reads as under:-

> "6. Application for permission.- (1) Subject to rule 4, if any person having a legal right to an agricultural land, intends to construct a Cinema-house, or a Hotel or to establish a petrol pump thereon or if any person who has trespassed upon Government agricultural land, and has utilised such land for the construction of a cinema or a Hotel, or for establishment of a Petrol Pump, wants to acquire lease rights in the land so used for construction of a Cinema or a Hotel, or for establishment of a Petrol Pump, he may submit an application in writing in Form `A' to the Collector of the District in which the said agricultural land is situated.
> (2) Such an application shall be verified by the applicant as a plaint according to the provisions of the Code of Civil Procedure,1908.
> (3) A receipt shall be given in respect of such application bearing time and date of receiving the same."

8. According to Rule 6-A, all applications received under Rule 5 are to be entered in a Register kept in Form `B'.

9. Rule 7 provides for scrutiny and enquiry of applications. Rule 7 reads thus:-

> "7. Scruting and Enquiry of applications.- (1) Within one month of the receipt of application, it shall be scrutinised and enquired into by the Collector or any other officer authorised by the State Government, the Collector or any other officer so authorised may, if he thinks proper refer any application for advice to the Chief Town Planner, Rajasthan or any of the authorities mentioned in Schedule II.
> (2) On receipt of the reference, the Chief Town Planner of the authorities mentioned in the Schedule II shall give advice within one month recommending the case for permission or giving reasons for its rejection. If such advice is not given within one month, the Collector or any other officer so authorised proceed further in the matter, without waiting for such advice, and it may be presumed that the Chief Town Planner or the authorities concerned have no objection to such permission.
> (3) Upon receipt of advice from the Chief Town Planner or the authorities mentioned in the Schedule II or after the expiry of one month from the date of reference, the Collector shall after making such further enquiries regarding the suitability of the land and such other matters as he may deem fit, pass necessary orders either granting or rejecting the application. In case of rejection he shall record his reasons for the same."

10. A look at Sub-rule 1 of Rule 7 demonstrates that it is incumbent on the Collector to scrutinise and make enquiry about the application. It is therefore to be seen whether in the instant matter the Collector made proper enquiry in respect of the application submitted by the petitioners. The Collector, it appears, was pursuaded by the letter of recommendation of Minister and after receiving favourable report from the Tehsildar, allotted the land to the petitioners. In my opinion, the procedure of enquiry followed by the Collector was against the principles of natural justice. Since the Collector failed to invite objections from the general public prior to passing of order of allotment, the order, in my opinion, is bad in law. In Parry and Co.Ltd. Vs. C.E. Association Madras (AIR 1952 SC 179) it was indicated that where the procedure followed is contrary to principles of natural justice certiorari will issue.

11. The intention of the legislature as appeared in first part of sub-rule 1 of Rule 7 is evident. The word `enquiry', would mean to denote that in scrutinising application, the Collector would collect all the information about the land in question and invite objections from the inhabitants residing in the village where the land situated. In the second part of the sub-rule (1) of Rule 7 Collector has has been given discretion to send the application for the advice of the Chief Town Planner but the order of Collector on its face shows that there has not been a judicial exercise of discretion and the order is against fundamental principles of justice. The Collector has not assigned any reason as to why the application was not sent to the Chief Town Planner for his advice. Since sub-rule 1 of Rule 7 was flouted by the Collector, the order of allotment of land deserves to be set aside and the case is required to be remitted for fresh inquiry.

12. I, therefore, dispose of the instant writ petition in the following terms:-

(i) The allotment order dated April 22, 1989 (Annexure-4) of the Collector Sawai Madhopur is set aside.
(ii) As a consequence thereof the impugned orders of RAA and Board shall also stand set aside.
(iii) The matter is remitted to Collector Karauli to make fresh scrutiny and enquiry of the application as mandated by sub-rule 1 of Rule 7 of the Rules after inviting objections of the inhabitants of the village where the land in question is situated.
(iv) The Collector Karauli shall ensure expeditious disposal of the application.
(v) There shall be no order as to costs.

(Shiv Kumar Sharma),J.

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